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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,614	03/09/2004	Shyam Kapur	600189-385	4081
61834	7590	06/14/2007		
DREIER LLP 499 PARK AVE NEW YORK, NY 10022			EXAMINER RADTKE, MARK A	
			ART UNIT	PAPER NUMBER
			2165	
			MAIL DATE	DELIVERY MODE
			06/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/797,614

Applicant(s)

KAPUR ET AL.

Examiner

Mark A. X Radtke

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-28, 42 and 43 is/are allowed.
- 6) ☒ Claim(s) 29-41 and 44-46 is/are rejected:
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remarks

1. In response to communications filed on 5 April 2007, claims 1-46 are presently pending. No amendments have been made to the claims.
2. In response to Applicant's arguments, the prior art rejections are withdrawn.
3. The rejection of claim 46 under 35 U.S.C. 112, second paragraph, is withdrawn. The phrase "about 70%" is not indefinite because the specific value is not critical to operation of the invention. In re Armbruster, 185 USPQ 152 (CCPA 1975)
4. Examiner notes that the allowability of the claims was discussed with Seth Ostrow (Reg. No. 37,410) on 7 June 2007 and the following modifications were agreed upon:

At line 10, claim 44, delete "in the event that" and insert --upon determining that--.

At line 2, claim 40, insert --executable by a processor-- after "program code".

These changes have not been entered into the record, but would overcome the 35 U.S.C. 101 rejection of those claims below. After further consideration, Examiner concluded that the proposed changes to claim 29 would not place it in condition for

allowance. Examiner suggests that Applicant: 1) add limitations to the claim explicitly reciting a processor, and/or 2) add limitations to the claim explicitly reciting a computer-readable medium storing the instructions.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 29-41 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed towards computer software *per se*. The modules of claim 29 and its dependents are defined solely as software in the specification (see paragraph [0051] and [0030] of the instant specification). Claim 40 and its dependant require the ability to be executed by a processor in order to be statutory.

7. Claims 44-46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, the claimed invention lacks concreteness because of the limitation at lines 9-10 of claim 44. If "the event" of line 10 never occurs, the claimed invention would "lock up" or pause indefinitely. It is suggested that Applicant amend claim 44 as suggested above.

Allowable Subject Matter

8. Claims 1-46 are allowed over the prior art made of record.

Conclusion


9. Any inquiry concerning this communication or earlier communications should be directed to the examiner, Mark A. Radtke. The examiner's telephone number is (571) 272-7163, and the examiner can normally be reached between 9 AM and 5 PM, Monday through Friday.

If attempts to contact the examiner are unsuccessful, the examiner's supervisor, Jeffrey Gaffin, can be reached at (571) 272-4146.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (800) 786-9199.

maxr

10 June 2007


JEFFREY GAFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100